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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,165	06/02/2006	Scrivas Gutta	P08655US01	3089
22885 7590 11/03/2010 MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721				
EXAMINER VO, CECILE H				
ART UNIT 2169		PAPER NUMBER		
NOTIFICATION DATE 11/03/2010		DELIVERY MODE ELECTRONIC		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/596,165
Filing Date: June 02, 2006
Appellant(s): GUTTA ET AL.

Edmund J. Sease, Registration No. 41,508
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 31, 2010 appealing from the Office action mailed March 04, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2006/0026642

Schaffer et al.

02-2006

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4 and 6-15 rejected under 35 U.S.C. 102(e) as being anticipated by Schaffer et al. (hereinafter referred to as Schaffer), US Pub. Number 2006/0026642 A1.

The applied reference has a common Assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome

either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, Schaffer discloses a method for generating a recommendation of at least one television program for a viewer (see abstract, lines 1-5), the method comprising:

using the viewer's television program recommender to access a plurality of user's recommenders at locations remote from that at which the viewer is located (e.g. The audience predictor (as *viewer's television program recommender*) uses the program recommendations that were generated for a number of users to predict the size of an audience, §0022, lines 5-8. Wherein, the audience predictor can collect the viewing histories over a network, §0026, lines 1-5);

using the viewer's recommender to communicate with a selection of the user's recommender to generate data representing, at least one of a negative and positive example feedback from one or more selected other users recommenders to be received (e.g. the present invention predicts a level of interest in an item, such as the size of an audience for a television program, based on the selection history of multiple users, §0021, lines 1-5. Wherein, the viewing histories use to generate user profiles; and user profile provides corresponding positive and negative program example, §0036, lines 1-3. Schaffer also discloses: The program recommendation can be generated for each user, §0031, lines 1-2); and

determining a recommendation for at least one television program to be watched in the future by the viewer based on at least one of the received negative and positive examples feedback (e.g. the profiling process processes the viewing histories to generate the corresponding user profiles. The program recommendation process generates program recommendation scores for the programs in a time period of interest, based on the feature counts in the user profiles. The audience prediction process predicts the size of an audience for a given television program based on the extent to which the program was recommended to the sampled users, §0029);

said determination of the recommendation being performed at the viewer location utilizing a processor provided as part of the viewer's television program recommender (e.g. The audience predictor 100 may be embodied as any computing device, such as a personal computer or workstation, that contains a processor 150, §0027, lines 1-3).

Regarding claim 2, Schaffer discloses the method further comprising generating a user profile for the user based on previous behavior of the user, wherein the determining comprises determining the recommendation based on the negative example and the user profile (e.g. the profiling process processes the viewing histories to generate the corresponding user profiles, §0029, lines 1-2).

Regarding claim 3, Schaffer further discloses wherein the generating of the user profile comprises generating an implicit user profile (As shown in Fig. 3, the implicit user

profile 300 contains a plurality of records 305-313 each associated with a different program feature, §0035, lines 2-4).

Regarding claim 4, Schaffer further discloses wherein the determining comprises determining the recommendation based on the negative and positive examples (§0045, lines 3-6).

Claim 5 is cancelled.

Regarding claim 6, Schaffer discloses the method further comprising:
mapping the negative example to an electronic program guide database of the user (§0025, lines 3-7); and

determining an equivalent negative example for the user from the electronic program database (e.g. the program recommendation process generates program recommendation scores for the programs in a time period of interest, based on the feature counts in the user profiles, §0045, lines 3-6).

Regarding claim 7, Schaffer discloses the method further comprising:
mapping the positive example to an electronic program guide database of the user (§0025, lines 3-7); and

determining an equivalent positive example for the user from the electronic program database (§0045, lines 3-6).

Regarding claim 8, Schaffer discloses the method further comprising determining the one or more other users (e.g. a number of users, §0025, line 5).

Regarding claim 9, Schaffer further discloses wherein the determining comprises selecting the one or more other users based on geographical location of the one or more other users (e.g. selected for the user based on his or her demographics, §0036, lines 13-14).

Regarding claim 10, Schaffer further discloses, wherein the determining comprises selecting the one or more other users based on a similarity of likes and/or dislikes with the one or more other users (§0044, lines 1-7).

Regarding claim 11, Schaffer further discloses wherein the determining comprises selecting the one or more other users by the user (§0049, lines 1-6).

Regarding claim 12, Schaffer further discloses, wherein the selecting comprises: presenting a plurality of other users to the user (e.g. As shown in Fig. 1 the audience predictor 100 uses the raw viewing histories of a number of users to predict the size of an audience, §0025, lines 3-6); and

the user selecting from among the plurality of other users to determine the one or more other users (e.g. Fig. 3 is a table illustrating an exemplary implicit user profile

contains a plurality of records each associated with a different program feature, §0035, lines 1-4).

Regarding claim 13, Schaffer further discloses, wherein the presenting comprises presenting the plurality of users based on geographical location of the one or more other users (§0021, lines 1-6).

Regarding claim 14, Schaffer further discloses, wherein the presenting comprises presenting the plurality of users based on a similarity of likes and/or dislikes of the one or more other users (e.g. Fig. 4 is a table from the program database of figs 1 and 2, with field 480 is record and indication of the predicted audience as determined by the audience prediction process, §0038, lines 1-2 ad 0039) .

Regarding claim 15, Schaffer further discloses, wherein the selecting comprises the user indicating the one or more other users (§0026, lines 1-5).

Claims 16-23 are cancelled.

(10) Response to Argument

In response to Appellant's argument 1: **"the Examiner's broadest construction rubric cannot be used to "make up" for lack of teachings in the art".**

The Appellant directs the Examiner to page 4, lines 1-2 of the originally filed specification to describe "*viewer*". However, definition of "*viewer*" was not mentioned or requested by the Examiner in the Final Rejection dated March 4, 2010. In addition, the term "*a viewers recommendation system*" in the Appellant's argument, is not recited in claim language; therefore, the term is not necessary to be construed in this response.

In response to Appellant's argument 2: **"the requirements for a prima facie case of anticipation"**.

The examiner has provided: a single reference that teaches or enables each of the claimed elements expressly or inherently as interpreted by one of ordinary skill in the art.

In response to Appellant's argument 3: **"Schaffer which is commonly owned has NOTHING to do with the claim invention"**.

The Examiner respectfully disagrees. In the final rejection of 03/04/2010, page 4, the Examiner submitted that: the step of "*determining a recommendation for at least one television program to be watched in the future by the viewer based on at least one of the received negative and positive examples feedback*" is disclosed by Schaffer in §0029 (e.g. the profiling process processes the viewing histories to generate the corresponding user profiles. The program recommendation process generates program recommendation scores for the programs in a time period of interest, based on the feature counts in the user profiles. The audience prediction process predicts the size of an audience for a

given television program based on the extent to which the program was recommended to the sampled users). Wherein, the viewing histories use to generate user profiles; and user profile provides corresponding positive and negative program example, §0036, lines 1-3.

Appellant also argued that: it does not provide a "*determination of recommendation for a viewer's processor that is a part of the viewer's television program recommender based upon other user's television program recommenders*".

The Examiner respectfully submits that limitation "*determination of recommendation for a viewer's processor that is a part of the viewer's television program recommender based upon other user's television program recommenders*" is not recited in claim language; therefore, the limitation is not necessary to be construed in this response.

In response to Appellant's argument 4: **"The specifics of Schaffer's deficiencies are numerous"**

The Examiner respectfully disagrees.

As per Appellant's assertion: "*the present claims are directed to the invention of generating a recommendation for a particular individual user abased on recommendation data obtained form other users*". The Examiner respectfully submits that Schaffer's invention relates to methods for predicting a level of interest in an item, based on the selection history of multiple users and the extent to which the item is recommended to the user. In Schaffer's invention, the program recommendations can be generated for multiple users, such as audience (e.g. the audience predictor predicts the size of an audience for one or more programs that ate influenced by the viewing habits of multiple users and

the extent to which program are recommended to the users, §0032, lines 7-10); it also can be generated for an individual (e.g. the program recommendations can be generated for each user, by any available television program recommender, such as the Tivo™ system, §0031, lines 1-3 and §0032, lines 1-7). Based on above discussions, Appellant's invention being anticipated by Schaffer.

The Examiner noted that, Appellant's argument on page 6 of Appeal Brief filed 08/31/2010, states that: Schaffer does not teach that "a recommendation for a program is generated based on feed back from other users' T.V. recommenders", is not recited in claim language; therefore, the limitation is not necessary to be construed in this response.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

/Cecile Vo/
Patent Examiner
Art Unit 2169(a)
December 01, 2008

Art Unit: 2169

Appeal Conference held on Wednesday, 27-October-2010, at 1:30 pm EST.

Agreement was reached to proceed to the Board of Appeals and Interferences.

Conferees:

Tony Mahmoudi

/Tony Mahmoudi/

Supervisory Patent Examiner, Art Unit 2169

/CHARLES KIM/

Supervisory Patent Examiner, Art Unit 2157